

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO. 471 OF 2015

Mr. Romeo Pascol Kinny and ors. .. Applicants  
vs.  
Smt. Savitri w/d. of Dr. Umashankar Dwivedi . Respondents

Mr. A. Tripathi a/w. Ms. Veera Shinde for the Applicants.  
Mr. R.K. Desai for Respondent.

CORAM : M. S. SONAK, J.  
DATE : 25 AUGUST 2015.

**ORAL JUDGMENT:**

1] This Civil Revision Application impugns the judgment and decree dated 10 April 2015 made by the Division Bench of the Small Causes Court at Mumbai (Appeal Court), *inter alia*, declaring the respondent as the tenant in respect of the suit premises.

2] Mr. Tripathi, learned counsel for the applicants, submitted that under the scheme of Section 7 (15) of the Maharashtra Rent Control Act, 1999 ( Rent Act), which defines the expression '*tenant*' only such member of the tenant's family or such legal heir of the tenant, who, where the suit premises were let out for commercial purposes, is using the suit premises for any such purpose at the time of demise of the original tenant, can qualify to be a tenant of the suit premises. Mr. Tripathi submitted that if the legislature has deemed it

appropriate to impose a condition upon any member of the tenant's family, that such member uses the suit premises for commercial purposes, at the time of death of the original tenant, in order to claim tenancy to the suit premises, then it is only logical that the same condition should also apply to a legal heir of the deceased tenant, who claims tenancy to the suit premises. Mr. Tripathi submits that such interpretation adopted by the Small Causes (Trial Court), was unjustifiably upset by the Appeal Court. Therefore, Mr. Tripathi contends that the impugned order is without jurisdiction or in any case, in excess of jurisdiction.

3] Mr. Tripathi submits that the view taken by the Appeal Court is contrary to the law and therefore, the impugned order should be set aside, at least on grounds of illegality and material irregularity by exercising revisional powers under Section 115 of the Code of Civil Procedure, 1908 (CPC).

4] In order to appreciate Mr. Tripathi's contention, reference is required to be made to the extract of relevant provisions contained in Section 7(15)(d) of the Rent Act, which reads thus:

7. (15) “tenant” means any person by whom or on whose account rent is payable for any premises and includes-

(a) .....

(b) .....

(c) .....

(d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who, -

(i) where they are let for residence, is residing or

(ii) where they are let for education, business, trade or storage, is using the premises for any such purpose,

with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement by the court;

*Explanation - The provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.*

5] From the plain reading of the aforesaid provisions, it is clear that the legislature has merely granted a priority in the matter of claim of tenancy rights to any member of the tenant's family, who, where the suit premises are let for commercial purposes, is using such premises for any such purpose with the tenant at the time of his death. Further, the provisions in Section 7(15)(d) of the Rent Act proceed to lay down that in the absence of any member, any heir of the deceased tenant, as may be decided, in the absence of

agreement by the Court, will qualify to be the tenant in respect of the suit premises. The legislature has not provided any condition of user of the suit premises by the legal heir alongwith the tenant at the time of his demise. This omission is obviously deliberate and the same shall have to be respected when interpreting the statutory provisions.

6] The Apex Court, in case of *Vasant P Pandit vs. Dr. Anant T. Sabnis*<sup>1</sup>, has interpreted the provisions contained in Section 5(11)(c) of the Bombay Rents, Hotel and Lodging Houses Rates Control, 1947 Act (1947 Act), which defines the expression '*tenant*'. The definition of the expression '*tenant*' as contained in Section 5(11)(c) of the 1947 Act and the definition of the same expression as contained in Section 7(15)(d) of the Rent Act is same, insofar as the material aspects are concerned. The Apex Court, in the context of definition in Section 5(11)(c) of the 1947 Act, has held that from plain reading of the statutory provision, it is obvious that the legislative prescription is first to give protection to members of the family of the tenant residing with him at the time of his death. The basis for such prescription seems to be that when a tenant is in occupation of premises, the tenancy is taken by him not only for his

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1 (1994) 3 SCC 481

own benefit but also for the benefit of the members of the family residing with him. Therefore, when the tenant dies, protection should be extended to the members of the family who were participants in the benefit of the tenancy and for whose needs as well the tenancy was originally taken by the tenant. It is for this avowed object, the legislature has, irrespective of the fact whether such members are '*heirs*' in the strict sense of the term or not, given them the first priority to be treated as tenants. It is only when such members of the family are not there, the '*heirs*' will be entitled to be treated as tenants as decided, in default of agreement, by the Court. In other words, all the heirs are liable to be excluded, if any other member of the family was staying with the tenant at the time of his death.

7] The definition of the expression '*tenant*' under section 7(15) (d) of the Rent Act, can be conveniently divided into two parts in the matter of determining the status of tenancy, when the original tenant expires. The first part provides that the term '*tenant*', in relation to any premises, when the tenant dies, would include any member of the tenant's family, where the tenanted premises were let out for commercial purposes, was using the premises for such purpose with

the original tenant at the time of his death. Second part of this definition, which is separated from the first part with the preposition 'or' as well as the expression '*in the absence of such member*' provides that the term '*tenant*' will also include any heir of the deceased tenant, as may be decided, in the absence of agreement, by the Court. The definition, therefore, includes at least two categories of persons. The first category includes member of the deceased tenant's family, who was carrying on business in the tenanted premises at the time of the original tenant's death. In the absence of any member from the first category, the second category would include any heir of the deceased tenant, as may be decided, in the absence of agreement, by the Court.

8] The restrictive interpretation suggested by Mr. Tripathi finds no support either in the text or in the authorities on the subject. Such interpretation, if is accepted, would render latter part of the definition which is separated from the former part with the preposition 'or' and the expression '*in the absence of such member*' completely redundant or otiose. It is settled principle in law that no word or expression employed by the legislature is to be regarded as surplusage or redundant. Clearly therefore, the respondent stands

included in the latter part of the definition of the term '*tenant*' under section 7(15)(d) of the Rent Act.

9] In case of *Tarachand & Anr. vs. Ramprasad*<sup>2</sup>, the Apex Court has held that the contractual tenant has an estate or property in the leasehold interest of tenancy and its heritability is an incidence of tenancy. The tenant, who continues to remain in possession even after the termination of the contractual tenancy till a decree of eviction is made against him, continues to have an interest or estate in the tenanted premises. Therefore, in the absence of any provision in the Rent Act regulating the rights of the heirs of the tenant to inherit the tenancy rights in the commercial premises after the tenant's death, tenancy rights devolve upon the heirs under the ordinary law of succession. From this, it is clear that, despite termination of tenancy, tenancy rights are heritable and the heirs of the tenant are entitled to the protection of the Act. Under the Rent Act, as it applies to the present case, this principle has found statutory recognition to the extent indicated in section 7(15)(d) of the Rent Act.

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2 (1990) 3 SCC 526

10] Similarly, in the context of the definition of the term '*tenant*' under section 5(11)(c) of the 1947 Act, the Division Bench of this Court in the case of *Rajaram Brindavan Upadhyaya & Ors. vs. Ramraj Raghunath Upadhyaya & Ors.*<sup>3</sup> has held that the said provisions were not meant to supersede the right of inheritance to the tenancy vesting in the heirs on the death of the tenant under the personal law of the parties. The provisions contained in section 5(11)(c) were however amended by the Bombay Rent Act No. XXII of 1978 which entered into force on 23 October 1978. In the context of the amended provisions, the learned Single Judge of this Court in the case of *C. J. Ghadiali & Ors. vs. Z. B. Wadiwalla*<sup>4</sup> held that there was complete change in law since the decision in the case of *Rajaram (supra)* and after the 1978 Amendment, it is only in the absence of member of the tenant's family residing with the tenant at the time of the death of the original tenant, that any heir of the deceased tenant acquires tenancy rights under the Rent Act. From this, it follows that under the unamended 1947 Act, the Division Bench of this Court had recognised that the provisions of 1947 Act were not made to supersede the rights to inheritance of tenancy vesting in the heirs on the death of the original tenant. Further, after

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3 1977 Mh. L. J. 792

4 1981 Mh. L. J. 876

the amendment, such rights shall accrue to the legal heirs of the deceased tenant, only in the absence of member of the tenant's family residing with the tenant at the time of his demise. In both situations, therefore, devolution of the tenancy upon the heirs was contemplated, except that after the 1978 amendment, the devolution upon the heirs in accordance with law of inheritance was made subject to absence of any member of the tenant's family using the tenanted premises for the purposes for which they were let out along with the original tenant, at the time of the demise of such original tenant.

11] In view of the aforesaid, it cannot be said that the impugned judgment and decree made by the Appeal Court is either in excess of jurisdiction or the same is vitiated by any illegality or material irregularity. In this case, there is no serious dispute that the suit, which has now been decreed, was instituted by the wife of the original tenant and consequently a legal heir of the original tenant. Assuming, therefore, that the wife was not using the suit premises for commercial purposes, at the time of death of her husband, the wife can always claim tenancy on the basis of heir-ship in view of peculiar provisions contained in Section 7(15)(d) of the Rent Act.

12] The Appeal Court has also taken the view that the applicants herein, having instituted R.A. E. Suit No. 274/428 of 2013 seeking the eviction of the respondent from the suit premises, is deemed to have admitted position that the respondent is the tenant in respect of the suit premises. There is no necessity to decide upon such issue though, at least, *prima-facie*, the learned counsel for the applicants is right in his submission that it was always open for the applicants to institute such suit without prejudice to the applicants claim that none of the legal heirs of the deceased tenant can claim tenancy to the suit premises, as they were allegedly not using the suit premises for commercial purposes with the original tenant at the time of his death.

13] Accordingly, Civil Revision Application is dismissed. There shall be no order as to costs.

**(M. S. SONAK, J.)**

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